THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 35220 of 1999

Dated: 17-11-2005

Between:

State Bank of Hyderabad Employees Co-operative Housing Society ltd., Domalguda, Hydeabad (Regd. No.TA 9) represented by its Secretary D.L.N.Murthy.

..Petitioner.

And

The State of A.P., rep. by its Secretary to the Government, Municipal Administration Department, Secretariat, Hyderabad and others.

..Respondents.

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No: 35220 of 1999

ORDER:

(1) This petition was filed against respondents 1 to 4 only. As per the order dated 20-4-1999 in W.P.M.P.No.179 of 1999 respondents 5 and 6 are added as parties to this petition.

(2) The case of the petitioner, in brief, is that it is a society registered under the provisions of the Co-operative Societies Act for the purpose of acquiring land and building houses for accommodating the employees of the State Bank of Hyderabad in twin cities, and that it purchased an extent of 11,138.32 square yards of land in Sy.Nos. 33 and 34 (old) corresponding to new Sy.No.188 in Domalguda area, which was known as Gaganmahal village, for the purpose of building houses and providing accommodation to its members, and sought for approval of a lay out from the Commissioner/Special Officer, Municipal Corporation of Hyderabad (MCH) (2nd respondent) and also the Deputy Commissioner, Municipal Corporation of Hyderabad, Circle-III (3rd respondent), but the same was refused on the ground that an extent of 650 square metres area was not earmarked as a park/lung space for the housing colony and so, in order to meet the said requirement, it entered into an agreement to purchase an extent of 425 Square metres of land belonging to Brij Raj Srivastava (5th respondent) for valuable consideration and submitted a revised lay out, which was approved on 25-9-1976 and thereafter all its members constructed houses in the plots allotted to them. The plot of 650 square metres earmarked for park/lung space which was fenced by the MCH authorities was being used by the residents of the locality. Sale deed dated 10-8-1976, executed by the 5th respondent in respect of 425 square metres in its favour, when presented for registration, was returned for presentation with a clearance certificate from the Urban Land Ceiling authorities, 5th respondent who promised to produce the certificate from the Urban Land Ceiling authorities, instead of producing the same started making constructions in the said area earmarked for park/lung space, and so it filed W.P.No.6 of 1998 and obtained an interim order, that petition was later disposed of with certain directions. Against the said judgment, 5th respondent and his son Prakash Srivastav (6th respondent) preferred W.A.No.1138 of 1998, which was dismissed on 23-7-1998. Inspite of that order of dismissal, respondents 2 and 3, without taking steps to develop the said area

of 425 square metres earmarked as park/lung space, are permitting constructions being made by respondents 5 and 6. Hence this petition seeking a direction to respondents 2 and 3 to develop 650 square meters earmarked as park/lung space shown in the revised lay out dated 25-9-1976, after removing the constructions made by respondents 5 and 6 therein.

(3). No counter or counter affidavit is filed on behalf of the first respondent.

(4). On behalf of respondents 2 and 3, 3rd respondent filed his counter-affidavit inter alia admitting issuance of a revised lay out permit on 25-9-1976 to the petitioner and that about its filing W.P.No.6 of 1998 and the dismissal of W.A.No.1138 of 1998 and contending that inasmuch as the petitioner failed to produce its title deed in respect of 425 Square metres land and had failed to issue a reply to the show cause notice issued to it, and had also failed to submit its explanation to the representation of 5th respondent, it revoked the revised lay out dated 25-9-1976 and requested the petitioner to hand over the open space for park, as per the original lay out permit No.92/19 dated 1-8-1974 and the petitioner who did not comply with the notice is not entitled to any relief.

(5). On behalf of respondents 5 and 6, 6th respondent filed his counter-affidavit inter alia contending that inasmuch as the sale deed dated 10-8-1976 executed in pursuance of the agreement between them and , the petitioner was not registered the said agreement of sale was cancelled, and the amount received as advance was returned to the petitioner and so, the petitioner has no right over the land of 425 square metres agreed to be sold to it, and that they, after obtaining permission for construction from the MCH only, are making constructions in the land of 425 square metres belonging to them and so, the petitioner is not entitled to any relief.

(6). The main contention of the learned counsel for the petitioner is that since the order of this Court in W.P.No.6 of 1998 dated 26-3-1998 mandates that an equal extent of land should be made available for public purpose i.e., the

park/lung space, the action of respondent Nos. 2 and 3 in permitting constructions in the lung space earmarked in the lay out dated 25-9-1976 is improper and is in violation of the dicta of the Apex Court that the lung space cannot be used for any other purpose. He placed strong reliance on **BANGALORE MEDICAL TRUST V. B.S. MUDDAPPA; M.I.BUILDERS PRIVATE LIMITED V. RADHEY SHAYM SAHU AND NGOs COLONY DEVELOPMENT COMMITTEE, MACHILIPATNAM V. DISTRICT COLLECTOR, KRISHNA, MACHILIPATNAM** in support of his contention**.**

(7)**.** The contention of the learned Standing Counsel for respondents 2 and 3 is that since the revised lay out dated
25-9-1976 was revoked after issuing notice to the petitioner, the original lay out dated 1-8-1974 stood revised, as per which petitioner has to provide open site for park/lung space and since the petitioner has not been responding to various notices issued by the MCH to provide such space, petitioner is not entitled to any relief.

(8). The contention of the learned counsel for respondents 5 and 6 is that since there admittedly is no registered sale deed in respect of 425 square metres of site agreed to be sold by 5th respondent to the petitioner, title to that property still vests in the 5th respondent only and since the agreement of sale between the 5th respondent and the petitioner was cancelled and the amount received under the agreement was refunded to the petitioner, petitioner cannot seek a direction to respondents 1 to 4 to develop the site belonging to respondents 5 and 6 as park/lung space for the residents of the colony constructed by the petitioner and since respondents 5 and 6 are proceeding with the construction only after obtaining necessary sanction from the MCH, petitioner is not entitled to any relief.

(9). In reply, the contention of the learned counsel for the petitioner is that since question whether agreement of sale between petitioner and respondents 5 and 6 was cancelled and if the advance received was refunded to the petitioner or

not, are all questions of fact, which are in dispute they cannot be gone into now and in any event since the MCH has no jurisdiction to go into the question of title, and since the specific direction of this Court in W.P.No.6 of 1998, as confirmed in appeal, is that unless an alternative site is made available, status quo has to continue, respondents 2 and 3 approving the plan of 5th respondent and 5th respondent proceeding with constructions in the site of 425 Square metres earmarked as park/lung space is in violation of the order in W.P.No.6 of 1998.

(10). There can be no dispute for the proposition that all areas earmarked as parks and lung space, which vest in the local bodies,cannot be used for any purpose, other than the purpose for which they are intended. Since the prayer in the petition is to "direct the respondents to develop the area into a park as per the approved lay out dated 25-9-1976 modifying the permit No.92/19 dated 1-8-1974", the point for consideration in this petition is whether the petitioner can be granted that relief.

(11). On my direction, the learned standing counsel for MCH produced the concerned file. It shows that on a representation made by the 5th respondent that inasmuch as the agreement between him and the petitioner is cancelled he continues to be the owner of 425 square metres of site, earlier agreed to be sold to the petitioner, a show cause notice as to why the revised permit dated 25-9-1976 should not be cancelled was issued to the petitioner by the MCH. In response to that notice, the Secretary of the petitioner, through his letter dated 25-7-1998 made a request to furnish a copy of the representation dated 29-4-1998 of the 5th respondent for the petitioner to give a proper reply, while alleging that that notice is not in accordance with the judgment of this Court. In response to the said letter, second respondent, through his letter R.No. 3535/TPL/MCH/98/2090 dated 27-8-1998 furnished a copy of representation of the 5th respondent dated 29-4-1998 to the petitioner, and the same was received on behalf of the petitioner on 28-8-1998. But petitioner failed to send a reply to the show cause notice. Therefore, vide proceedings in L.R.No.3535/TPL/MCH/98 dated 21-9-1998, revised lay out, approved vide permit No.75/35 dated 25-9-1976, was revoked and petitioner was asked to

handover the reserved open space for park/public purpose, as per the original approved lay out permit No. 92/19 dated 1-8-1974. After receipt of those proceedings only petitioner thought it fit to file this petition.

(12) Since it is faintly contended by the learned counsel for the petitioner that petitioner has no notice of revocation of the revised permit No.75/35 dated 25-9-1996 I feel it relevant to mention that in the reply affidavit filed by the Secretary of the petitioners' Association on 12-04-2002, in response to the counter affidavit of the 3rd respondent, he clearly alleged that the 3rd respondent (MCH) ought not to have cancelled the lay out or sanctioned the building permission to the 5th respondent without availability of alternative land for development of park/lung space, as directed by this Court in its order in W.P.No.6 of 1998. From that averment itself it is easy to see that petitioner has knowledge of the order of cancellation of the revised permit No.75/35 dated 25-9-1976 through the proceedings dated 21-9-1998. But, significantly, petitioner did not question the said order of cancellation. When the revised lay out permit No.75/35 dated 25-9-1976 ceased to exist, this Court, giving a direction to the respondents to develop the area earmarked therein as park does not arise.

(13). The below underlined portion in the operative portion of the order dated 26-3-1998 in W.P.No.6 of 1998;

> "In these circumstances, the action of the respondent- Corporation in granting permission in favour of respondents 4 and 5 for constructing the building is declared ultra vires. The permission granted is accordingly set aside.
>
> However, it shall be open to respondents 4 and 5 to make an appropriate representation to the respondent-Corporation bringing the true and correct facts to its notice as to how the society obtained the revised lay out, showing the said space as if reserved for a public purpose, without their having any title.
>
> The contents of the representation to be made by the respondents 4 and 5 shall be taken into consideration and it shall always be open to the respondent-Corporation to further revise the lay out if the facts and

circumstances so warrant, provided, an equal extent of land is available or made available for public purpose, namely, providing or developing a park/lung space".

Is the sheet anchor of the case of the petitioner, because the contention of the learned counsel for the petitioner is that MCH cannot grant permission to 5th respondent to construct a building in the disputed area without showing an alternative site for being used as a park/lung space. It is also his contention that since there is no direction to any particular authority to make available an alternative land, it should be construed that the area earmarked in the revised permit No.75/35 dated 25-9-1976 should be preserved till an equivalent land is made available. I am unable to agree with the said contention, since the petitioner sought for and obtained a revised lay out by showing 625 Square metres, including the land of 425 square yards of site agreed to be purchased by it from the 5th respondent, it is for the petitioner only to provide an alternative site. Though MCH has no jurisdiction to go into the question of title, merely because petitioner has shown the land agreed to be purchased by it, as its land in the lay out i.e MCH, it has the right and authority to revoke the revised lay out when the vendor makes a representation to it that inasmuch as the agreement has been cancelled, he may be permitted to use the same, after issuing a show cause notice to the petitioner. Though petitioner was given an opportunity to give a reply on the representation of the 5th respondent, petitioner failed to send a reply. So MCH revoked the revised lay out. Consequently, the original lay out dated 1-8-1974 stood revived and so it is for the petitioner to provide the lung space. Petitioner, cannot, by showing the lands of others as the land belonging to it, be heard to say that the land of others its shown by it should not be used for any other purpose and enjoy its own land at the expense of respondents 5 and 6. If the petitioner feels that it still has a right or interest as 425 square yards agreed to be sold to it by the 5th respondent, basing on which, it obtained the revised lay out, it has to establish its right therein in a Civil Court, and it may not necessary for respondents 5 and 6 to go to a Civil Court to establish their right.

(14). Since reference is made to the dismissal of W.A.No.1138 of 1998 filed by respondents 5 and 6, I feel it relevant to extract the order passed therein. It reads:

> "Admittedly, the appellants herein have acted in terms of the order of the learned Single Judge by way of filing representation and the Muinicipal Corporation has already issued notices to the appropriate authorities. In that view of the matter, interference of appellate Court in the order of the learned single Judge is only unwarranted and as such this appeal is dismissed. No order as to costs".

(15). It is also necessary to mention that petitioner filed C.C.No.771 of 1998 complaining violation of the order dated 26-3-1998 in W.P.No.6 of 1998. The same was dismissed on 24-11-1998 by observing as follows:

> "Sri P. Veera Reddy, learned counsel for the respondents 4 & 5 made available a certified copy of the order dated 2-9-1998 showing that the suit filed by them has been dismissed as withdrawn. Further, the report of the Deputy Commissioner, M.C.H would show that no work is going on in the premises of respondents 4 and 5 after 26-3-1998. In such view of the matter, I have to hold that the respondents have not committed any act amounting to contempt of Court.
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> The cause in the contempt case does not survive. The C.C. shall accordingly stand dismissed".

16. In view thereof, petitioner is not entitled to any relief and in my opinion this petition is but an abuse of process of the Court and so it is dismissed with costs.

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17-11-2005

sj